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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

United States District Court
Southern District of Texas
FILED

APR 17 2001

Michael N. Milby
Clerk of Court

RAQUEL O. RODRIGUEZ, as legal guardian
of JOSE L. RODRIGUEZ,

Plaintiff,

Case No. B-96-cv-177

vs.

RIDDELL, INC.; and ALL AMERICAN
SPORTS CORPORATION, d/b/a
RIDDELL/ALL AMERICAN,

Defendants.

PLAINTIFF'S MOTION IN LIMINE NO. 18

**PLAINTIFF'S MOTION IN LIMINE TO EXCLUDE ANY EVIDENCE
NOT DISCLOSED DURING THE COURSE OF DISCOVERY
PRIOR TO THE FIRST TRIAL OF THIS MATTER**

COMES NOW the Plaintiff, by and through her counsel of record, and requests an order of this Court precluding the Defendants from offering any evidence or witnesses not timely disclosed during discovery conducted before the original trial of this matter in March 1999, on the grounds that the admission of any new evidence and/or witnesses not disclosed during discovery would greatly prejudice Plaintiff and unduly prolong these proceedings, to Plaintiff's detriment.

MEMORANDUM OF POINTS AND AUTHORITIES

On or about April 13, 2001, Defendants disclosed twelve (12) new experts, in addition to those they called at the trial of this matter in March 1999. Therefore, it is anticipated that Defendants will attempt to offer evidence and witnesses at the retrial of this matter which were not disclosed during discovery. This Court has broad discretion to limit discovery and evidentiary proof at a new trial upon remand from a higher court. This Court's discretion to manage trials extends on remand to all areas not covered by the higher court's mandate. *Martin's Herend Imports, Inc. v. Diamond & Gem Trading United States of America Co.*, 195 F.3d 765, 775-76 (5th Cir. 1999) (“[b]ased on [defendant's] post-remand proffering of additional evidence without any explanation of why it did not offer it at the first trial, and based on the injustice that might result for [plaintiff] in having to prepare for this new evidence, the court did not abuse its discretion in limiting [defendant] to the witnesses and evidence it offered at the first trial.”)

Since the Fifth Circuit's remand and reversal was based solely upon the jury charge and the Defendants had the opportunity to offer all relevant evidence at the first trial, this Court should limit the Defendants to the witnesses and evidence they offered at the first trial.

If the Defendants are permitted to offer additional evidence and witnesses not disclosed during discovery, it will unduly delay the retrial of this case and unfairly prejudice the Plaintiff.

WHEREFORE, Plaintiff respectfully requests that this Court limit the Defendants to the experts and evidence they offered at the first trial, and deny any further discovery in this matter which would unduly delay the retrial.

DATED this 17th day of April, 2001.

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By Rex Blackburn, by J. A.

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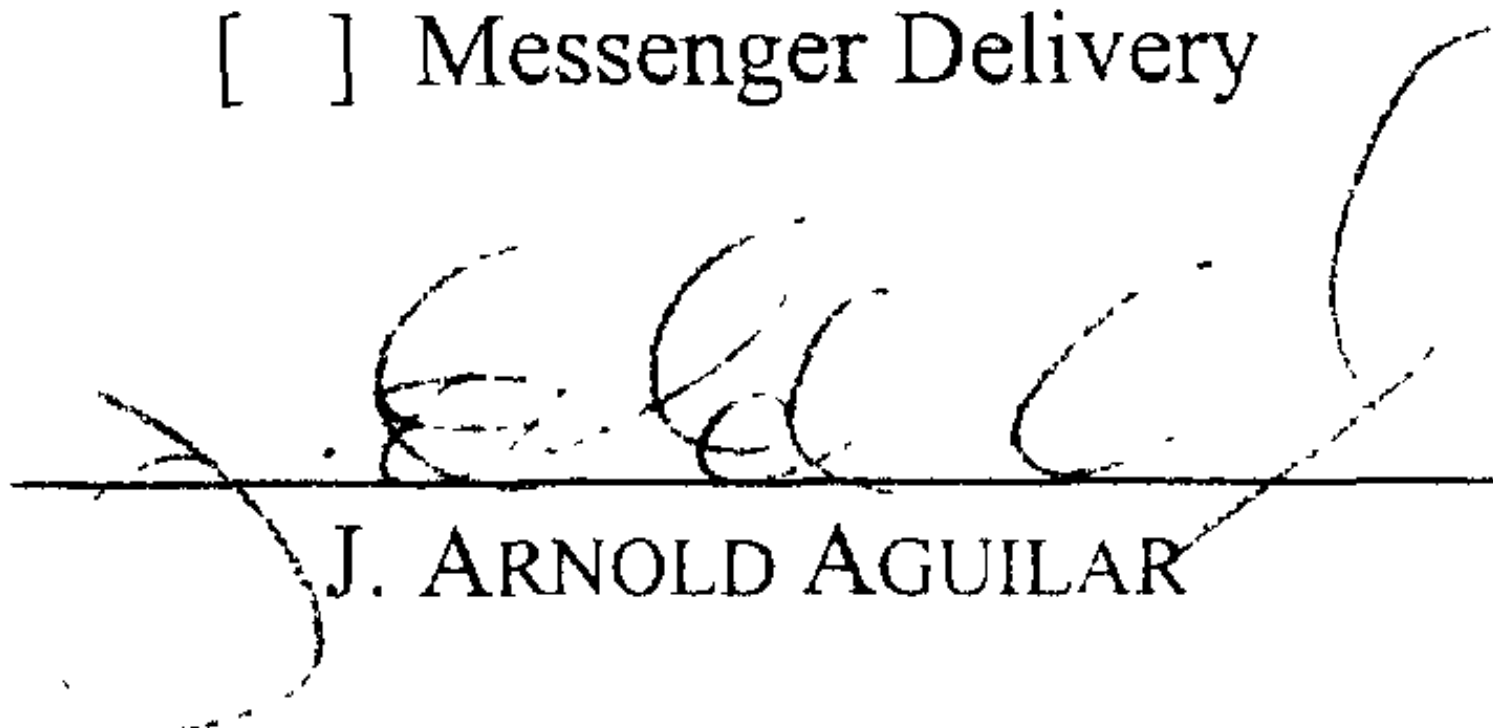
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 17th day of April, 2001, a true and correct copy of the foregoing document was served by first-class mail, postage prepaid, and addressed to; by fax transmission to; by overnight delivery to; or by personally delivering to or leaving with a person in charge of the office as indicated below:

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